

**CALIFORNIA COASTAL COMMISSION**

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# W-6

Staff Report: October 1, 2004  
Hearing Date: October 13, 2004  
Staff: CLD-SF

**STAFF REPORT FOR COMMISSION CEASE AND DESIST ORDER**

CEASE AND DESIST ORDER: CCC-04-CD-10

RELATED VIOLATION FILE: V-4-02-051

PROPERTY DESCRIPTION: 19016 Pacific Coast Highway, Malibu, Los Angeles County (APN 4449-003-027). This property fronts onto Topanga Beach.

PROPERTY OWNER: David Harner

VIOLATION DESCRIPTION: Maintaining development without a coastal development permit in violation of the requirements of Coastal Development Permit No. 5-83-456 (Friedman) and in violation Coastal Act. The unpermitted development consists of a locked gate, wooden stairway, part of a timber bulkhead on the beach, and concrete caissons that form a return wall. This unpermitted development is located in vertical public access easement.

SUBSTANTIVE DOCUMENTS: Staff Report for Coastal Development Permit No. 5-83-456 (Friedman) (EXHIBIT A); Irrevocable Offer to Dedicate (Los Angeles County Recorded Document No. 84 199298) (EXHIBIT B)

CEQA STATUS: Exempt (CEQA Guidelines (CG) Sections 15060(c)(3), 15061(b)(2), 15307, 15308 and 15321 of CEQA Guidelines.



## **I. Summary**

David Harner (hereinafter "Harner") is the owner of the property at 19016 Pacific Coast Highway in Malibu, Los Angeles County (hereinafter "Subject Property") (See Map, EXHIBIT C). The Subject Property contains unpermitted development that is blocking a vertical public access easement that runs along the western boundary of the property extending from Pacific Coast Highway to the mean high-tide line. The unpermitted development in the easement consists of a locked gate at the landward entrance to the easement, a wooden stairway, part of a timber bulkhead on the beach, and concrete caissons that form a return wall (See Photographs, EXHIBIT D). The property was purchased with the recorded irrevocable offer-to-dedicate (OTD) the public access easement in place and the easement specifies that the OTD shall run with the land binding successors and assigns of the applicants or landowners (EXHIBIT B).

In February 1984 the previous property owner (Dorothy Freidman) recorded the OTD in compliance with the requirements of Special Condition 2 of Coastal Development Permit (CDP) No. 5-83-456, which authorized construction of the single-family residence on the property. The unpermitted development described above is not authorized by CDP No. 5-83-456 and does not comply with the approved plans for the house. Although the unpermitted development was installed by Friedman, maintenance of the unpermitted development continues to be a violation of the Coastal Act and a violation of CDP No. 5-83-456, which also constitutes a Coastal Act violation. On June 10, 2004, Access For All, a California non-profit organization, recorded a Certificate of Acceptance of the OTD (EXHIBIT E) and the Executive Director has approved a management plan for the access way (EXHIBIT F).

This proposed Cease and Desist Order (CDO) would require Harner to cease and desist from maintaining the unpermitted development in the easement and upon notification by Commission staff, to remove all of the unpermitted development except any portion identified in an approved plan for improvements to the easement as development that may remain.

## **II. Hearing Procedures**

The procedures for a hearing on a proposed CDO are outlined in Section 13185 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 8. The CDO hearing procedure is similar in most respects to the procedures the Commission utilizes for permit and local coastal plan (LCP) matters.

For a CDO hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the



rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR Section 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue this CDO, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of this CDO.

### **III. Motion**

MOTION 1: I move that the Commission issue Cease and Desist Order No. CCC-04-CD-10 pursuant to the Staff recommendation and Findings.

#### Staff Recommendation of Approval:

Commission staff recommends a **YES** vote. Passage of the motion results in adoption of the following resolution and findings and the issuance of Cease and Desist Order No. CCC-04-CD-10. The motion passes only by an affirmative vote of a majority of Commissioners present.

#### Resolution to issue Cease and Desist Order:

The Commission hereby issues Cease and Desist Order No. CCC-04-CD-10 set forth below and adopts the proposed findings set forth below on the grounds that Harner is maintaining development without a coastal development permit and in direct conflict with the terms of the CDP and recorded OTD, and thus has violated the Coastal Act.

### **IV. Proposed Findings**



A. Coastal Act Authority

This CDO is being issued pursuant to Section 30810 of the Coastal Act, which provides in relevant parts:

*(a) If the Commission, after public hearing, determines that any person... has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the Commission, the commission may issue an order directing that person or governmental agency to cease and desist.*

*(b) The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.*

B. Unpermitted Development

Coastal Act Section 30600(a) requires that any person wishing to undertake development in the coastal zone shall obtain a CDP from the Commission. "Development" is defined in Section 30106 of the Coastal Act as "on land, in or under water, the placement or erection of any solid material or structure;" and "construction, reconstruction, demolition, or alteration of the size of any structure." The unpermitted development in the easement consists of a locked gate at the landward entrance to the easement, a wooden stairway, part of a timber bulkhead on the beach, and concrete caissons that form a return wall. The unpermitted development blocks an easement that provides public access from Pacific Coast Highway to the shoreline. Thus, pursuant to CCR, Title 14, Article 5, Section 13166, even if Harner had applied for an amendment to authorize the unpermitted development after-the-fact, the Executive Director would be required to reject the application because such an amendment would "lessen or avoid the intended effect of an approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted."



C. Irrevocable Offer to Dedicate Vertical Public Access Easement

In August 1983, the Commission approved CDP No. 5-83-456 for construction of a single-family residence on an oceanfront lot in Malibu. Special Condition 2 of the permit required the applicant, Friedman, to record an irrevocable offer-to-dedicate a 3-foot wide vertical access easement from Pacific Coast Highway to the shoreline. On February 16, 1984, the offer was recorded as Instrument No. 84 199298 in the Los Angeles County Records Office. The Offer provides that the easement shall "provide public access to the shore line." As noted, the unpermitted development blocks the easement and prevents the public from using the access way. The unpermitted development in the easement is clearly inconsistent with the intent of the Commission in CDP No. 5-83-456 to establish a vertical public access way from Pacific Coast Highway to shoreline.

D. Background and Administrative Resolution Attempts

(1) Initial Contacts

On May 12, 2003, Commission staff sent Harner a Notice of Violation regarding the unpermitted development in the easement. The notice stated that the unpermitted development is a Coastal Act violation and could not be authorized through an amendment to CDP No. 5-83-456 because the development is inconsistent with the Chapter 3 policies of the Coastal Act and the conditions of the permit. The letter notes that CCR, Title 14, Article 5, Section 13166 requires the Executive Director to reject an application for an amendment to a previously approved CDP if such an amendment would lessen or avoid the intended effect of any condition of that permit. In this case the unpermitted development in the easement clearly prevents it from being used as a vertical public access way to get to and from the shoreline from Pacific Coast Highway, and allowing the unpermitted development to remain would lessen and avoid the intended effect of Special Condition 2 of CDP No. 5-83-456. The letter directed Harner to remove the unpermitted development from the easement by June 11, 2003.

No response to the Notice of Violation was received from Harner. Therefore, on January 30, 2004, Staff sent a second letter to Harner regarding the Coastal Act violations on the Subject Property. The letter requested that Harner respond by March 1, 2004 and indicate whether he had removed the unpermitted development or was willing to do so.

On June 15, 2004, Staff still had not received any response from Harner. Therefore, Staff sent Harner a Notice of Intent to Issue a Cease and Desist Order (EXHIBIT G). In the notice Staff noted that the development in the easement was unpermitted, was inconsistent with the approved plans for CDP No. 5-83-456 and the Special Conditions attached to the permit, and therefore constituted violations of the Coastal Act. Staff informed Harner that the OTD had been



accepted by Access for All on June 10, 2004 and that the unpermitted development must be removed so that improvements can be made to the easement and it can be opened for public use. Staff indicated a desire to work cooperatively with Harner to resolve the Coastal Act violations on the Subject Property and open the public access way. In accordance with the requirements of the timelines set forth in CCR, Title 14, Article 5, Section 13181 Staff directed Harner to return the completed statement of defense form by July 6, 2004 if he opposed issuance of the CDO. Lastly, Staff indicated its intention to schedule a public hearing on the CDO at the August 2004 Commission meeting.

(2) Telephone Call of July 8, 2004

On July 8, 2004, Harner telephoned Staff to discuss the Notice of Intent to Issue a CDO dated June 15, 2004. During the call, Harner expressed several concerns regarding opening the public access way and the potential impacts of improvements to the easement that Access for All is contemplating:

- a. Harner expressed concern that the wave uprush under his house and in the easement during high tide and storm events could be hazardous to pedestrians using the public access way.
- b. Harner expressed concern that a concrete stairway in easement would function as a ramp that would allow waves to wash over his return wall and under the Subject Property and damage his septic system.
- c. Harner expressed concern regarding the potential for crime and vandalism of the Subject Property due to the presence of the public access way adjacent to the front door of his house.
- d. Harner inquired about legal liability for the easement and expressed concern about the potential for vandalism of the Subject Property by people using the public accessway.
- e. Harner noted that the California Department of Transportation (hereinafter "Caltrans") owns a narrow strip of land nearby where a drainage culvert under Pacific Coast Highway drains onto the beach and suggested that it might be a more suitable location for public access way because it is adjacent to a bus stop.



Staff Responses:

- a. California Civil Code Section 846 provides that an owner of any estate or other interest in real property, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose. The code defines "recreational purpose" broadly, and specifically includes water sports, sightseeing, picnicking, nature study and viewing or enjoying science and natural sites. Furthermore, Signs could be posted at the entrance to the access way to caution pedestrians about the use of the access way during such times and under such conditions.
- b. Any design for public access improvements in the easement approved by the Executive Director would take into consideration protection of the Subject Property.
- c. Access for All has also proposed installing a time lock gate at the entrance to the access way that would automatically unlock and lock at sunrise and sunset.
- d. The holder and manager of the easement, Access for All, is responsible for the easement and is fully insured through a commercial policy with the Chubb Insurance Company.
- e. There is no space for a public access way at the Caltrans property. In addition, a public access stairway from Pacific Coast Highway to the beach directly in front of the outfall of the culvert would clearly be undesirable, inconsistent with the drainage of the culvert, and potentially hazardous when water is running through the culvert.

As noted elsewhere, Harner neglected to submit a statement of defense as required by CCR, Title 14, Article 5, Section 13181. Although he did not timely raise issues in a statement of defense, as a courtesy, Staff has provided legal and factual responses to some of the concerns raised by Harner in the July 8, 2004 telephone discussion.

Staff further notes, however, that the objections raised by Harner during the call were objections to the permit condition requiring recordation of the public access OTD, and the time for objecting to the condition ran in 1983 and such objection cannot be heard now. The law regarding this is well established and has been recently affirmed. The permit condition became final and binding in 1983 when Friedman failed to challenge them and accepted the permit benefits. Abundant case authority establishes that Harner is bound by the conditions of the 1983 permit and that they may not relitigate those permit conditions now. (See, e.g., *Serra Canyon Company Ltd. v. California Coastal Commission* (2004) 120



Cal.App.4th 663, *County of Imperial v. McDougal* (1977) 19 Cal.3d 505, 510 [terms and conditions of a land use permit run with the land]; *Ojavan Investors, Inc. v. California Coastal Commission* (1997) 24 Cal.App.4th 516, 527 [predecessors in interest cannot transfer any legal rights greater than they themselves possess and successors obtain property with the same limitations and restriction which bound their predecessors].)

### (3) Subsequent Contacts

On July 15, 2004, Staff sent a letter to Harner following-up on the telephone discussion on July 8, 2004 and a voicemail message left for him on July 9, 2004 (EXHIBIT H). Staff suggested that Harner consult an engineer regarding the location of the septic tank under his house and the feasibility of constructing a concrete stairway in easement. Staff also enclosed another copy of the Notice of Intent to Issue a Cease and Desist Order and a statement of defense form, a copy of the Approved Management Plan for the easement, and information about Access for All, the non-profit corporation that accepted the OTD. In addition, Staff indicated that Staff had rescheduled the Commission hearing on the proposed CDO at the Commission meeting scheduled for September 8-10, 2004 in Eureka and that Staff was extending the deadline for submitting his statement of defense to August 16, 2004.

Despite the extension of the deadline, Harner had not submitted a statement of defense by September 3, 2004. Staff telephoned Harner and left a message on his voicemail stating that Staff had not received a statement of defense by the August 16, 2004 deadline and that the Commission hearing on the CDO had been postponed until the October 2004 Commission meeting. Staff requested that Harner contact Staff regarding the proposed CDO, however, no response was received.

On September 27, 2004, Staff contacted Harner on the telephone to confirm that he had received the Notice of Intent to Commence Cease and Desist Order Proceedings and other correspondence from Staff. Harner stated that he wanted to submit a statement of defense even though the deadline had long since passed and that he was trying to hire an agent. Staff indicated that it would accept his statement of defense if it was submitted by September 30, 2004. Despite this final extension, which required this report to be sent in the "Late Mailing," as of September 30, 2004 no statement of defense from Harner had been received.



E. Determinations of Fact

- (1) On August 25, 1983 the Commission issued CDP No. 5-83-456. Special Condition 2 of the CDP required Friedman to record an Irrevocable Offer to Dedicate a 3-foot wide vertical public access easement along the western boundary of the Subject Property extending from Pacific Coast Highway to the shoreline. In February 1984, Friedman recorded the OTD. The OTD explicitly provides that the offer shall run with the land, binding all successors and assigns of the applicants and landowners. In 1997 Harner purchased the Subject Property, which was subject to the requirements of the CDP and the recorded OTD. On June 10, 2004, Access for All recorded a Certificate of Acceptance of the Irrevocable Offer to Dedicate.
- (2) The development both lacks a CDP, which is a violation of the Coastal Act, and is inconsistent with the approved plans for CDP No. 5-83-456 and thus a violation of the permit, which is also a violation of the Coastal Act.
- (3) Harner has maintained development without a CDP in a portion of his property that was subject to an irrevocable offer-to-dedicate a 3-foot wide vertical public access easement along the western boundary of the property extending from Pacific Coast Highway to the mean high tide line.
- (4) The maintenance of development that is blocking a public access easement on the Subject Property is a violation of the terms of CDP No. 5-83-456 (Friedman), which is also a violation of the Coastal Act.

F. Violators' Defenses and Commission's Response

As of the date of this report, Harner has not submitted the statement of defense form setting forth his response to Staff's allegations as set forth in the June 15, 2004 Notice of Intent to Commence Cease and Desist Order Proceedings. The Notice of Intent established a deadline of July 6, 2004 for submittal of the statement of defense form. Staff subsequently extended this deadline to August 16, 2004. Since the completion of the statement of defense form is mandatory, Harner has failed to raise and preserve any defenses that he may have.

The State legislature explicitly granted the Commission the right to "adopt or amend...rules and regulations to carry out the purposes and provisions of [the Coastal Act], and to govern procedures of the Commission." (Pub. Res. Code Section 30333.) Relying on such powers, the Commission promulgated Section 13181 entitled "Commencement of Cease and Desist Order Proceeding before the Commission," which became operative on September 3, 1992. (See CCR, Title 14, Section 13181, and historical comments thereto.) Subdivision (a) of Section 13181 provides in relevant part:



"If the executive director believes that the results of an enforcement investigation so warrant, he or she shall commence a cease and desist order proceeding before the commission by providing any person whom he or she believes to be engaging in development activity as described in Section 30810(a) of the Public Resources Code with notice of his or her intent to do so...The notice of intent shall be accompanied by a "statement of defense form" that conforms to the format attached to these regulations as Appendix A. The person(s) to whom such notice is given shall complete and return the statement of defense form to the Commission by the date specified therein, which date shall be no earlier than 20 days from transmittal of the notice of intent." (CCR, Title 14, Section 13181, subd. (a); emphasis added.)

The statement of defense form requirement serves an important function. (See, e.g., *Horack v. Franchise Tax Board* (1971) 18 Cal.App.3d 363, 368) ("Where administrative machinery exists for resolution of differences, such procedures must be "fully utilized and exhausted"). The Commission's cease and desist hearings are "quasi-judicial." Thus, if the Commission is to make findings of fact and conclusions at law in the form of an adopted Staff Report, Harner must inform the Commission, precisely and in writing, which defenses he wishes the Commission to consider. The statement of defense form has six categories of information that Harner should have provided to the Commission: (1) facts or allegations contained in the cease and desist order or the notice of intent that are admitted by respondent; (2) facts or allegations contained in the cease and desist order or the notice of intent that are denied by respondent; (3) facts or allegations contained in the cease and desist order or the notice of intent of which the respondent has no personal knowledge; (4) facts and/or a description of any documents, photographs or other physical evidence that may exonerate the respondent; (5) any other information, statement, etc. that respondent desires to make; and (6) a listing of any documents, exhibits, declarations or other materials that are being attached by respondent to the statement of defense form.

The Commission should not be forced to guess which defenses Harner wants the Commission to consider and which defenses they may have raised informally prior to the hearing but now wish to abandon. Section 13181, subdivision (a) is specifically designed to serve this function of clarifying the issues to be considered and decided by the Commission. (See *Bohn v. Watson* (1954) 130 Cal.App.2d 24, 37 ("It was never contemplated that a party to an administrative hearing should withhold any defense then available to him or make only a perfunctory or 'skeleton' showing in the hearing...The rule compelling a party to present all legitimate issues before the administrative tribunal is required...to preserve the integrity of the proceedings before that body and to endow them with a dignity beyond that of a mere shadow-play").)



Despite this, as a courtesy, Staff has attempted to address any potential issues or concerns expressed by Harner herein (See Section (4)d).

## **V. California Environmental Quality Act**

The Commission finds that issuing an order to cease and desist from maintaining unpermitted development in violation of the Coastal Act and CDP No. 5-83-456, and to remove of such development is consistent with the requirements of the California Environmental Quality Act (CEQA) of 1970 and will have no significant adverse effects on the environment, within the meaning of CEQA. The proposed CDO and RO are exempt from the requirements for the preparation of an environmental impact report based upon sections 15060(c)(3), 15061(b)(2), 15307, 15308, and 15321 of CEQA Guidelines.

## **VI. Exhibits**

- A. Staff Report for Coastal Development Permit No. 5-83-456 (Friedman), August 25, 1983.
- B. Irrevocable Offer to Dedicate, Los Angeles County Recorded Instrument No. 84 199298, February 16, 1984.
- C. Map showing location of the Subject Property.
- D. Photographs showing development blocking the public access easement taken by Staff on March 11, 2004 and April 14, 2004.
- E. Certificate of Acceptance and Acknowledgement by California Coastal Commission of Acceptance of Irrevocable Offer to Dedicate, Los Angeles County Recorded Instrument No. 04 1490729.
- F. Public Vertical and Lateral Access Easement Management Plan, June 5, 2004, Access for All.
- G. Notice of Intent to Commence Cease and Desist Order Proceeding, June 15, 2004.
- H. Letter from Staff to David Harner dated July 15, 2004.



## **COMMISSION CEASE AND DESIST ORDER NO. CCC-04-CD-10**

Pursuant to authority in Section 30810 Title 14 California Code of Regulations, the Commission hereby orders David Harner (hereinafter "Harner"), owner of the property described in Section 3.0 of this Cease and Desist Order (hereinafter "Subject Property"), to cease and desist from maintaining development without a coastal development permit (hereinafter "CDP") in violation of the Coastal Act and in violation of the terms of a previously approved CDP, the violation of which is also a violation of the Coastal Act. Harner is also hereby ordered to remove the unpermitted development from the easement, with the exception of any portion of the development identified in a plan approved by the Executive Director as development that may remain. Lastly, Harner is ordered allow Access for All, a California non-profit corporation and the holder of the easement on the Subject Property, and its employees to make certain improvements to the public access easement necessary to facilitate use of the public accessway, subject to the plan to be prepared by Access for All and approved by the Executive Director of the California Coastal Commission.

### **1.0 PUBLIC ACCESS EASEMENT**

Special Condition 2 of CDP No. 5-83-456<sup>1</sup> required the applicant (Dorothy Friedman) to record an irrevocable offer-to-dedicate a 3 foot wide vertical public access easement extending from Pacific Coast Highway to the mean high tide line along the western boundary of the Subject Property. On February 16, 1984, the applicant Dorothy Friedman (hereinafter "Friedman") recorded the irrevocable offer-to-dedicate in the Los Angeles Recorder's Office as Document No. 84 199298. On June 10, 2004, Access for All, a California non-profit corporation, recorded a Certificate of Acceptance of the Irrevocable Offer to Dedicate as Document No. 04 1490729.

### **2.0 UNPERMITTED DEVELOPMENT**

The unpermitted development on the Subject Property consists of a locked gate, a wooden stairway, part of a timber bulkhead, and concrete caissons forming a return wall. In 1984, Friedman recorded an irrevocable offer-to-dedicate a public access easement across the Subject Property. In 2004 Access for All recorded a Certificate of Acceptance of the offer and is willing to open the easement for public use but the unpermitted development is blocking the easement and thus is preventing Access for All from opening the easement and the public from using the recorded public accessway.

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<sup>1</sup> On August 25, 1983, the Commission issued CDP No. 5-83-456 to Dorothy Friedman to authorize construction of a 3 story, 2,602 square foot, single-family residence on a vacant oceanfront lot in Malibu, Los Angeles County.



## 2.0 REMOVAL OF DEVELOPMENT

Upon notification by the Commission staff, Harner shall remove the unpermitted development from the easement (with the exception of any portion of the development identified in a plan approved by the Executive Director as development that may remain). To eliminate any hazard which might be caused by a delay between removal of the illegal development and construction of the public access improvements, the removal shall take place concurrently with construction of the improvements to the public access way. If he so chooses, Harner may hire the same contractor employed by Access for All to make the improvements to the public access way to remove the illegal development.

## 3.0 PROPERTY DESCRIPTION

The Subject Property is identified as 19016 Pacific Coast Highway, Malibu, Los Angeles County (APN 4449-003-027). The Subject Property is a beachfront lot and is between the first public road and the sea. The lot contains a single-family residence. There is a 3 foot wide deed restricted vertical public access way on the lot adjoining the western boundary of the Subject Property that runs parallel and adjacent to the easement on the Subject Property.<sup>2</sup>

## 4.0 PERSONS SUBJECT TO THIS CEASE AND DESIST ORDER

Persons subject to this Cease and Desist Order are David Harner, his agents and employees, and contractors, and any persons acting in concert with any of the foregoing.

## 5.0 COMMISSION AUTHORITY TO ACT

The Commission is issuing this Cease and Desist Order pursuant to its authority under Section 30810 of the Public Resources Code.

## 6.0 FINDINGS

This Cease and Desist Order is being issued on the basis of the Findings adopted by the Commission on October 8, 2004, as set forth in the attached document entitled Staff Report for Cease and Desist Order No. CCC-04-CD-10.

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<sup>2</sup> 19020 Pacific Coast Highway, Malibu, Los Angeles County. The owner of the property is Mark B. Gilmartin. The deed restriction was recorded on April 28, 1977 as Document No. 77-435422 by the previous property owner in compliance with a condition attached to the original coastal permit that approved construction of Gilmartin's house.



## 7.0 EFFECTIVE DATE

This Cease and Desist Order shall become effective as of the date of issuance by the Commission and shall remain in effect permanently unless and until rescinded by the Commission.

## 8.0 COMPLIANCE OBLIGATION

Strict compliance with the terms and conditions of this Cease and Desist Order is required. If Harner fails to comply with the requirements of this Order, it will constitute a violation of the Order and may result in the imposition of civil penalties of up to six thousand dollars (\$6,000) per day for each day in which compliance failure persists pursuant to Section 30821.6(a) of the Coastal Act.

## 9.0 SITE ACCESS

Harner shall provide Access for All and its employees access to the Subject Property at all reasonable times for the purpose of designing, constructing and maintaining the public access improvements to the easement. Harner shall also provide Commission staff access to the Subject Property at all reasonable times to verify compliance with the requirements of this Cease and Desist Order and inspect the progress of the improvements.

## 10.0 APPEALS AND STAY RESOLUTION

Pursuant to Title 14 Public Resources Code Section 30803(b), Harner against whom this Cease and Desist Order is issued may file a petition with the Superior Court for a stay of the Order.

## 11.0 GOVERNMENT LIABILITY

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Harner in carrying out activities required and authorized under this Cease and Desist Order, nor shall the State of California be held as a party to any contract entered into by the Harner or his agents in carrying out activities pursuant to this Order.

## 12.0 SUCCESSORS AND ASSIGNS

This Cease and Desist Order shall run with the land, binding all successors in interest, future owners of the Subject Property, heirs and assigns of Harner. Notice shall be provided to all successors, heirs and assigns of any remaining obligations under this Order.



### 13.0 GOVERNING LAW

This Cease and Desist Order shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California, which apply in all respects.

### 14.0 NO LIMITATION OF AUTHORITY

Except as expressly provided herein, nothing herein shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Cease and Desist Order.

Issued this 13th day of October 2004.

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Peter M. Douglas, Executive Director  
California Coastal Commission

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Date